



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY OF PRINCE RUPOERT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with the application by the Applicant to obtain the following from the Respondent as identified above pursuant to the *Residential Tenancy Act* (the *Act*) for :

- a monetary order for other money owed by the Respondent pursuant to section 67; and
- authorization to recover the filing fee for this application from the Respondent pursuant to section 72.

The Respondent did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the Respondent to call into this teleconference hearing scheduled for 1:30 p.m. The Applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Applicant and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of Application for Dispute Resolution to Respondent

The Applicant gave sworn testimony that they sent a copy of the dispute resolution hearing package to the Respondent by registered mail on August 1, 2018. After some searching, the Applicant read into the record a Canada Post Tracking Number to confirm this registered mailing. The Applicant said that this package was not returned to them, although they had not checked to determine whether it had been successfully delivered to the Respondent.

The Applicant also testified that the same information was conveyed to the Respondent in a previous hearing of the RTB file number noted on the first page of this decision.

As I waited for the Respondent to connect with this hearing, I checked the RTB's records and discovered that the RTB File Number referenced by the Applicant as the previous hearing did not exist. (see first page of this decision).

I also checked Canada Post's Online Tracking System, and discovered that there was no record of the tracking number identified by the Applicant as proof of the registered mailing of this dispute resolution hearing package to the Respondent.

Analysis of Preliminary Issue -Service of Notice of Dispute Resolution to Respondent

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;...*
- (d) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Section 15 of the RTB's Policy Guideline 12 on Service Provisions outlines the following information that is to be made available to demonstrate service of documents, including an application for dispute resolution:

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply...

In this case, the Applicant did not enter into written evidence a copy of the Canada Post Registered Mail receipt, a copy of the Tracking Number, or any document showing the printed tracking report. Although I was willing to consider a valid Canada Post Tracking

Number entered into sworn testimony by the Applicant and search for this tracking report during the hearing, the tracking number provided by the Applicant did not match with the corresponding tracking number on Canada Post's Online Tracking System. Under these circumstances, I advised the Applicant that I was not satisfied that the dispute resolution hearing package had been served to the Respondent in accordance with section 89(1) of the *Act*. For this reason, I dismissed this application with leave to reapply.

The Applicant asked that I include in my decision reference to his disagreement with this determination, which is hereby duly noted.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution.

In the event that the Applicant does reapply, I would suggest that the Applicant take care to correctly spell the name of the Respondent and the address of any tenancy involved in the application, as neither occurred with respect to the current application. In any future application, I would also encourage the Applicant to provide information to demonstrate that an actual tenancy pursuant to the *Act* exists in which the Applicant has the legal right to act as Landlord regarding that tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 04, 2018

Residential Tenancy Branch